

Office of the Regulator-General Act 1994

No. 42 of 1994

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Victoria

No. 42 of 1994

Office of the Regulator-General Act 1994

[Assented to 7 June 1994]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is to—

- (a) establish the Office of the Regulator-General;
and
- (b) create an economic regulatory framework for regulated industries which promotes and safeguards competition and fair and efficient market conduct or, in the absence of a competitive market, which promotes the simulation of competitive market conduct and the prevention of the misuse of monopoly power.

2. Commencement

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation with the period of 6 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

3. Definitions

- (1) In this Act—

“Associate Regulator-General” means a person appointed as an Associate Regulator-General under section 17;

“determination” means a determination made by the Office under Part 3;

“Office” means the Office of the Regulator-General established under section 6;

“regulated entity” means an entity operating in a regulated industry;

“regulated industry” means an industry operating under relevant legislation which is specified by the relevant legislation as, or declared by an Order in Council under sub-section (2) to be, a regulated industry;

“Regulator-General” means the person appointed as Regulator-General under section 14;

“relevant legislation” means legislation which is specified by that legislation as being relevant legislation;

“statement of government policy” means a statement of government policy declared under section 10.

- (2) The Governor in Council may by Order published in the Government Gazette declare—
- (a) an industry operating under relevant legislation to be a regulated industry;
 - (b) which prices are to be prescribed prices in respect of a regulated industry;
 - (c) which goods and services are to be prescribed goods and services in respect of a regulated industry;
 - (d) powers that are to be exercised by the Office in respect of a regulated industry under section 26.

4. *Interpretation and application of Act and statements of government policy*

- (1) Subject to sub-section (2), if there is any inconsistency between this Act and any other Act, the provisions of this Act prevail.
- (2) If the Office considers that there is a conflict between the objectives specified in or under this Act and the objectives specified in the relevant legislation under which a regulated industry operates, the Office must perform its functions and exercise its powers in such a manner as the Office considers best achieves the objectives specified in the relevant legislation.
- (3) It is the intention of Parliament that this Act is to be interpreted and administered in accordance with statements of government policy.

5. *Crown to be bound*

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—OFFICE OF THE REGULATOR-GENERAL

6. *Office of the Regulator-General*

- (1) There is established a body corporate called the Office of the Regulator-General.
- (2) The Office—
 - (a) has perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is capable of taking, purchasing, leasing, holding, selling, exchanging and disposing of real and personal property for the purposes of this Act; and
 - (e) may do and suffer all acts and things which a body corporate may by law do and suffer and which are necessary or convenient for the purposes of this Act.
- (3) All courts must take judicial notice of the seal of the Office affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The common seal of the Office must be kept in such custody as the Office directs and must not be used except as authorised by the Office.

7. *Objectives of the Office*

- (1) In performing its functions and exercising its powers the Office has the following objectives—
 - (a) to promote competitive market conduct;
 - (b) to prevent misuse of monopoly or market power;
 - (c) to facilitate entry into the relevant market;
 - (d) to facilitate efficiency in regulated industries;
 - (e) to ensure that users and consumers benefit from competition and efficiency.

- (2) Without derogating from sub-section (1), the Office must also perform its functions and exercise its powers in such a manner as the Office considers best achieves any objectives—
- (a) specified in the relevant legislation under which a regulated industry operates; and
 - (b) specified in a statement of government policy.

8. *Functions of the Office*

The functions of the Office are—

- (a) to perform such functions as are conferred on the Office by the relevant legislation under which a regulated industry operates;
- (b) to advise the Minister on matters relating to the economic regulation and restructuring of regulated industries;
- (c) to conduct inquiries and report under Part 4 on matters relating to regulated industries;
- (d) to advise the Minister in relation to any matter referred to the Office by the Minister;
- (e) to perform such other functions as are conferred or imposed on the Office by this Act;
- (f) subject to the general direction and control of the Minister, to administer this Act.

9. *Powers of the Office*

- (1) Subject to this Act, the Office has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and to enable it to achieve its objectives.
- (2) Without derogating from sub-section (1), the Office also has such powers as may be conferred on the Office by the relevant legislation under which a regulated industry operates.

10. *Statements of government policy*

- (1) The Governor in Council may by Order published in the Government Gazette declare statements of government policy for the purposes of this Act or any other relevant legislation under which a regulated industry operates.
- (2) The Minister must give a copy of any statement of government policy declared under sub-section (1) to the Office.
- (3) The Office must ensure that it performs its functions and exercises its power in such a manner as the Office considers best gives effect to any relevant statement of government policy.

11. *Office not subject to direction or control*

Except as provided by or under this Act or any other Act, the Office is not subject to the direction or control of the Minister in respect of any determination, report or inquiry.

12. *Office may publish statements and guidelines*

The Office may publish statements and guidelines relating to the performance of its functions and the exercise of its powers.

13. *Membership of the Office*

The Office shall consist of one member appointed as the Regulator-General by the Governor in Council.

14. *The Regulator-General*

- (1) The Governor in Council may appoint a person as Regulator-General who is qualified for appointment because of his or her knowledge of, or experience in, one or more of the fields of industry, commerce, economics, law or public administration.

- (2) The Regulator-General is to be appointed on such terms and conditions, not inconsistent with this Act, as the Governor in Council determines.
- (3) The **Public Sector Management Act 1992** (including Part 9) does not apply to the Regulator-General in respect of his or her office as Regulator-General.
- (4) The Regulator-General must not directly or indirectly engage in any paid employment outside the duties of the office.
- (5) An act or decision of the Office is not invalid merely because of a defect or irregularity in, or in connection with, the appointment of the Regulator-General or a vacancy in the office of Regulator-General.

15. *Tenure of office of Regulator-General*

- (1) Subject to this Act, the Regulator-General holds office for 5 years and, subject to this section, is eligible for re-appointment.
- (2) The Regulator-General may be suspended from office by the Governor in Council, but must not be removed from office except in accordance with this Act.
- (3) The Minister must cause to be laid before each House of the Parliament a full statement of the grounds of any suspension of the Regulator-General within 7 sitting days of the House.
- (4) The Regulator-General so suspended must be restored to office by the Governor in Council unless each House of the Parliament, within 42 days after the day on which the statement is laid before it, and in the same session, declares by resolution that the Regulator-General ought to be removed from office and, if each House within that time so declares, the Regulator-General must be removed from office by the Governor in Council.
- (5) The Regulator-General ceases to hold office if he or she becomes bankrupt or applies to take the benefit of

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any law for the relief of bankrupt debtors or compounds with his or her creditors or makes an assignment of his or her property for their benefit or a deed of arrangement under any law relating to bankruptcy.

- (6) The Regulator-General ceases to hold office if he or she nominates for election for either House of the Parliament of Victoria or for the Parliament of the Commonwealth or of another State or of a Territory.
- (7) The Regulator-General may at any time resign by writing signed and addressed to the Governor in Council.

16. Acting appointment

- (1) The Governor in Council may appoint a person to act in the office of Regulator-General—
 - (a) during a vacancy in that office; or
 - (b) during any period, or during all periods, when the person holding that office is absent from duty or is, for any other reason, unable to perform the functions of that office—

but a person appointed to act during a vacancy must not continue so to act for more than 6 months.

- (2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) The Governor in Council—
 - (a) subject to this section, may determine the terms and conditions of appointment of a person acting in the office of Regulator-General; and
 - (b) may terminate such an appointment at any time.
- (4) If a person is acting in the office of Regulator-General in accordance with sub-section (1) (b) and that office becomes vacant while that person is so acting, that person may continue so to act until the Governor in Council otherwise directs, the

vacancy is filled or a period of 6 months from the date on which the vacancy occurred expires, whichever first happens.

- (5) While a person is acting in the office of Regulator-General in accordance with sub-section (1), the person has, and may exercise, all the powers, and shall perform all the functions, of that office under this Act.
- (6) The validity of anything done by or in relation to a person purporting to act in the office of Regulator-General under an appointment made under sub-section (1) shall not be called in question on the ground that the occasion for his or her appointment has not arisen, that there is a defect or irregularity in or in connection with his or her appointment, that the appointment had ceased to have effect or that the occasion for him or her to act had not arisen or had ceased.

17. Associate Regulators-General

- (1) The Minister may appoint persons as Associate Regulators-General who are qualified for appointment because of their knowledge of, or experience in, one or more of the fields of industry, commerce, economics, law or public administration.
- (2) An Associate Regulator-General is to be appointed on such terms and conditions, not inconsistent with this Act, as the Minister determines.
- (3) The Public Sector Management Act 1992 (including Part 9) does not apply to an Associate Regulator-General in respect of his or her office as Associate Regulator-General.
- (4) An Associate Regulator-General must not without the permission of the Minister directly or indirectly engage in any paid employment outside the duties of the office.

18. *Tenure of office of Associate Regulators-General*

- (1) Subject to this Act, an Associate Regulator-General holds office for such period not exceeding five years as is specified in the instrument of appointment and, subject to this section, is eligible for re-appointment.
- (2) An Associate Regulator-General may be appointed on a full-time or part-time basis or in respect of a specific period as the Minister determines.
- (3) The Minister may at any time remove an Associate Regulator-General from office.
- (4) An Associate Regulator-General may at any time resign by writing signed and addressed to the Minister.

19. *Payment of Regulator-General and Associate Regulators-General*

The Regulator-General and each Associate Regulator-General is entitled to be paid such remuneration and any travelling and other allowances as the Governor in Council fixes from time to time or as may be fixed in the relevant instrument of appointment.

20. *Staff*

- (1) There may be appointed or employed under the **Public Sector Management Act 1992**, any officers and employees that are necessary for the purposes of this Act.
- (2) The Office may enter into agreements or arrangements for the use of the services of any staff of a Department, statutory authority or other public body.

21. *Consultants*

- (1) The Office may engage persons with suitable qualifications and experience as consultants.

- (2) An engagement under sub-section (1) may be on any terms and conditions the Office considers appropriate.

22. Delegation

The Office may, by instrument under its common seal, delegate to an Associate Regulator-General or any other person referred to in section 20 any function or power of the Office under this Act or any other Act other than a function or power under Part 3.

23. Declaration of pecuniary interests

- (1) If the Regulator-General has a pecuniary interest in a matter being considered or about to be considered by the Office, the Regulator-General must as soon as practicable after the relevant facts have come to the Regulator-General's knowledge declare the nature of that interest to the Minister.
- (2) If an Associate Regulator-General has a pecuniary interest in a matter which he or she is considering or is about to consider in the course of performing his or her duties as an Associate Regulator-General, the Associate Regulator-General must as soon as practicable after the relevant facts have come to the Associate Regulator-General's knowledge declare the nature of that interest to the Minister.
- (3) Sub-sections (1) and (2) do not apply if the interest is as a result of the supply of goods or services that are available to members of the public on the same terms and conditions.
- (4) Unless the Minister otherwise directs, if the Regulator-General or an Associate Regulator-General has made a declaration under this section, the Regulator-General or the Associate Regulator-General must not take any further part in any decision in relation to the matter.
- (5) A failure to comply with this section does not affect the validity of any act or decision of the Office, the

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Regulator-General or an Associate
 Regulator-General.

PART 3—SPECIFIC POWERS

24. Price Regulation

- (1) The Office may regulate prescribed prices for or in respect of prescribed goods and services supplied by or within a regulated industry.

- (2) In this section—

“prescribed goods and services” means any goods or services made, produced or supplied by or within a regulated industry which goods or services are specified—

- (a) in the relevant legislation under which the regulated industry operates; or
 (b) in an Order in Council made under section 3 (2) in respect of a regulated industry—

as being goods or services in respect of which the Office has power to regulate prices;

“prescribed price” means the price or price-range however designated for the supply or sale of any goods or services by or within a regulated industry or particular factors used in price-fixing or terms and conditions relating to the price at which particular goods or services are supplied or sold, being a price, price-range, factor or term and condition specified—

- (a) in the relevant legislation under which the regulated industry operates; or
 (b) in an Order in Council made under section 3 (2) in respect of a regulated industry—

as being a price, price-range, factor or term and condition which the Office has power to regulate.

25. Price determinations

- (1) This section is subject to anything to the contrary in the relevant legislation or Order in Council specifying the prescribed prices or prescribed goods and services in respect of which the Office is exercising its power of regulation.
- (2) A price determination by the Office may regulate a prescribed price for prescribed goods and services in any manner the Office considers appropriate and must be consistent with any statement of government policy.
- (3) Without limiting the generality of sub-section (2), the manner may include—
 - (a) fixing the price or the rate of increase or decrease in the price;
 - (b) fixing a maximum price or maximum rate of increase or minimum rate of decrease in the maximum price;
 - (c) fixing an average price for specified goods or services or an average rate of increase or decrease in the average price;
 - (d) specifying pricing policies or principles;
 - (e) specifying an amount determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor;
 - (f) specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the rate or supply of the goods or services.
- (4) In making a determination under this section, the Office must have regard to—
 - (a) the costs of making, producing or supplying the goods or services;
 - (b) the return on assets in the regulated industry;

- (c) any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries;
- (d) the financial implications of the determination;
- (e) any factors specified in the relevant legislation;
- (f) any other factors that the Office considers relevant.

26. Other regulatory powers

- (1) The Office may exercise such powers (including the power to make determinations) for or with respect to—
 - (a) standards and conditions of service and supply;
 - (b) licensing;
 - (c) market conduct;
 - (d) other economic regulatory matters—as may be conferred on the Office by the relevant legislation under which a regulated industry operates or in an Order in Council made under section 3 (2) in respect of a regulated industry.
- (2) In making a determination under this section, the Office must have regard to—
 - (a) any factors specified in the relevant legislation;
 - (b) any factors specified in a statement of government policy;
 - (c) any other factors that the Office considers relevant.

27. General provisions relating to determinations

- (1) A determination must include a statement of the purpose and reasons for the making of the determination.
- (2) A determination must be—
 - (a) published in the Government Gazette; and

- (b) published in a daily newspaper generally circulating in Victoria; and
 - (c) sent to each regulated entity in the regulated industry to which the determination applies.
- (3) A determination takes effect on and from the date on which it is published in the Government Gazette or any later date of commencement as may be specified in the determination.
 - (4) A determination has effect until it is amended or revoked by a later determination or until such other date as is specified in the determination.
 - (5) A determination is binding on a regulated entity or a regulated industry specified in the determination.

PART 4—INQUIRIES AND REPORTS

28. *Inquiry by Office*

The Office may after consultation with the Minister conduct an inquiry if it considers an inquiry is necessary or desirable for the purpose of carrying out its functions.

29. *Minister may refer matter for inquiry*

- (1) The Office must conduct an inquiry into any matter which the Minister by written notice refers to the Office.
- (2) The written notice must specify the terms of reference for the inquiry.
- (3) The Minister may—
 - (a) specify a period within which a report is to be submitted to the Minister;
 - (b) require the Office to make a draft report publicly available or available to specified persons or bodies during the inquiry;
 - (c) require the Office to consider specified matters;

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- (d) give the Office specific directions in respect of the conduct of the inquiry.
- (4) The Office must report to the Minister on the results of any inquiry.
- (5) The Minister may amend the terms of reference or extend the period within which a report is to be submitted to the Minister.

30. *Notice of inquiry*

- (1) The Office must after notifying the Minister publish notice of an inquiry in a daily newspaper generally circulating in Victoria.
- (2) The notice must specify—
 - (a) the purpose of the inquiry;
 - (b) the period during which the inquiry is to be held;
 - (c) the period within which, and the form in which, members of the public may make submissions, including details of public hearings;
 - (d) the matters that the Office would like submissions to deal with.
- (3) If the inquiry relates to a matter referred to the Office by the Minister, the notice must include the terms of reference and the matters specified in section 29 (3).
- (4) The Office must publish a further notice if the Minister amends the terms of reference or extends the period within which the report is to be submitted to the Minister.
- (5) The Office must send a copy of any notice published under this section to the relevant regulated entities and any person or body that the Office considers should be notified.

31. *Conduct of inquiry*

- (1) Subject to this Act, the Office may conduct an inquiry in such a manner as it considers appropriate.

- (2) In conducting an inquiry, the Office is not bound by rules or practice as to evidence but may inform itself in relation to any matter in such manner as the Office considers appropriate.
- (3) The Office may receive written submissions or statements.
- (4) The Office must hold at least one public hearing and has a discretion as to whether any person may appear before the Office in person or be represented by another person.
- (5) The Office may determine that a hearing or a part of hearing be held in private if it is satisfied that—
 - (a) it would be in the public interest; or
 - (b) the evidence is of a confidential or commercially-sensitive nature.
- (6) In conducting an inquiry the Office may—
 - (a) consult with any person that it considers appropriate;
 - (b) hold public seminars and conduct workshops;
 - (c) establish working groups and task forces.

32. Powers relating to inquiries

- (1) The Office may serve upon any person a summons to—
 - (a) provide specified information; or
 - (b) produce specified documents; or
 - (c) appear before the Office to give evidence.
- (2) The Office may make an order for the manner of service, including substituted service, of a summons under sub-section (1).
- (3) If a document is provided or information given to the Office on the basis that it is of a confidential or commercially-sensitive nature, the Office may use the document or information for the purposes of the

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inquiry but must not otherwise disclose the contents of the document or the information.

Penalty: 100 penalty units or imprisonment for 2 years.

- (4) A person who without lawful excuse disobeys a summons of the Office is guilty of an offence.

Penalty: 100 penalty units or imprisonment for 2 years.

- (5) It is a lawful excuse for the purposes of sub-section (4) that compliance may tend to incriminate the person or make the person liable to a penalty for any other offence.

- (6) A person must not give information which he or she knows is false or misleading to the Office.

Penalty: 100 penalty units or imprisonment for 2 years.

- (7) A person must not take or be involved in any action that detrimentally affects the employment of another person or threaten to do so because that other person has assisted in any inquiry conducted by the Office.

Penalty: 100 penalty units or imprisonment for 2 years.

- (8) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of the making in good faith of a statement, or the giving in good faith of a document or information to the Office in connection with an inquiry under this Part, whether or not the statement is made, or the document or information is given, in connection with a written submission or a public hearing.

33. Reports

- (1) The Office must submit a copy of its final report on an inquiry to the Minister.

- (2) The Minister must cause a copy of the final report to be laid before each House of the Parliament within 7 sitting days of the House after receiving the final report.
- (3) The Minister must, after the final report has been laid before each House of the Parliament, or if the Parliament is not sitting, within 30 days after receiving a final report, ensure that a copy of the final report is available for public inspection.
- (4) After the Minister has made a final report publicly available, the Office must ensure that copies are available for purchase by members of the public.

34. *Special reports*

- (1) If in the course of an inquiry the Office considers that there is another matter on which the Office should report to the Minister, the Office may do so, in the final report or in a special report.
- (2) If the Office prepares a special report, sub-sections (2), (3) and (4) of section 33 apply to the special report as if it were a final report.

PART 5—GENERAL

35. *Enforcement orders*

- (1) This section applies if a person is contravening, or in the opinion of the Office is likely to contravene—
 - (a) a determination; or
 - (b) if the Office is under the relevant legislation or by virtue of an Order in Council under section 3 (2) responsible for licensing, the conditions of a licence—

and the Office considers that the contravention or likely contravention is not of a trivial nature.

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- (2) The Office may serve a provisional order or a final order on the person requiring the person to comply with the determination or licence condition.
- (3) Unless sooner withdrawn by the Office, a provisional order has effect for a period of 7 days commencing on the day that it is served.
- (4) The Office may serve another provisional order upon the expiry of a preceding provisional order.
- (5) If the Office has made a provisional order, the Office must not make a final order if—
 - (a) the person has undertaken to comply with the determination or licence condition; or
 - (b) the Office is satisfied that the order would be inconsistent with the objectives of this Act.
- (6) The Office must not make a final order unless the Office has—
 - (a) given the person at least 28 days notice of the intention to do so; and
 - (b) given the person the opportunity to make a submission in respect of the order; and
 - (c) considered any submission or other objection to the order received by the Office.
- (7) The Office must as soon as possible after serving a provisional order or a final order on a person publish a copy of the order in the Government Gazette.
- (8) A person must comply with a provisional order or a final order or an undertaking under sub-section (5) (a).

Penalty: 1000 penalty units and 100 penalty units for each day after service of the order that contravention continues.

36. Application to Supreme Court

The Office may apply to the Supreme Court for an injunction or declaration or both in respect of a

provisional order or final order served under section 35.

37. *Right of appeal*

- (1) A person who is aggrieved by a determination of the Office may appeal against the determination in accordance with this section.
- (2) An appeal must be made on the ground that—
 - (a) there has been bias; or
 - (b) the facts on which the determination is based have been misinterpreted.
- (3) Notice of the appeal must be lodged with the Office within 7 working days after the determination is published.

38. *Appeal panel*

- (1) An appeal under section 37 must be heard by an appeal panel consisting of 3 persons appointed by the Minister.
- (2) An appeal panel is to be constituted from a pool of persons appointed by the Governor in Council because of their knowledge of, or experience in, one or more of the fields of industry, commerce, economics, law or public administration.
- (3) An appeal must be heard and decided within 2 weeks of the appeal being lodged with the Office.
- (4) For the purposes of conducting an appeal, the appeal panel has such of the powers of the Office under Part 3 as are necessary to enable the appeal panel to determine whether the appeal should be granted and if so what amendments should be made to the determination.
- (5) The Office must give an appeal panel such assistance as the appeal panel may require including the provision of all the information available to the Office.

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- (6) The Office must take such action as is necessary to give effect to a decision of the appeal panel.
- (7) Regulations under section 43 may regulate proceedings under this section and provide for procedures to be followed by an appeal panel.

39. *Personal liability*

The Regulator-General, an Associate Regulator-General or any person referred to in section 20 is not personally subject to any action, liability, claim or demand for any matter or thing done in good faith for the purpose of carrying out a function or exercising a power under this Act or any other Act.

40. *Proceedings*

No proceedings may be brought in respect of a determination or a provisional order or final order other than on the grounds that there was no power to make the determination or provisional order or final order or that the procedural requirements in relation to the making of the determination or provisional order or final order have not been complied with.

41. *Supreme Court—limitation of jurisdiction*

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court from entertaining applications referred to in section 32 (8) or 40.

42. *Service of documents*

A document may be served on the Office by leaving it at or posting it to the principal office of the Office.

43. Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
 - (2) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 6 (2) of the **Subordinate Legislation Act 1962**.
 - (3) Disallowance of a regulation under sub-section (2) is deemed to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.
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NOTES

1. *Minister's second reading speech—*

Legislative Assembly: 5 May 1994

Legislative Council: 27 May 1994

2. The long title for the Bill for this Act was "A Bill to establish the Office of the Regulator-General and to create an economic regulatory framework for regulated industries and for other purposes."

3. **Constitution Act 1975:**

Section 85 (5) statement:

Legislative Assembly: 5 May 1994

Legislative Council: 27 May 1994

Absolute majorities:

Legislative Assembly: 26 May 1994

Legislative Council: 31 May 1994

4. Section headings appear in bold italics and are not part of the Act.
(See Interpretation of Legislation Act 1984.)